DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0276
FINANCIAL INSTITUTIONS TAX
For Year 1999

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ISSUES

I. Financial Institutions Tax – Regularly conducted business

Authority: 45 IAC 17-2-1(b)(1); 45 IAC 17-2-6(a)(8); 45 IAC 17-2-9

Taxpayer protests the imposition of the Financial Institutions Tax on the proceeds from the sale of the servicing rights associated with an Indiana mortgage.

STATEMENT OF FACTS

Taxpayer is an approved mortgagee by HUD/FHA, FNMA, and GNMA. Affiliated entities provide a substantial portion of the revenues and expenses of the company. Taxpayer reports the following types of income: financing fees, service fees, and interest income.

During 1999, taxpayer sold its servicing rights on an Indiana mortgage. On audit, the Financial Institutions Tax (FIT) was assessed on the proceeds of this sale.

Taxpayer owns no property, has no presence, and services no other loans in Indiana.

I. Financial Institutions Tax – Regularly conducted business

DISCUSSION

The Financial Institutions Tax is a franchise tax imposed upon a corporation that is transacting the business of a financial institution in Indiana. 45 IAC 17-2-1(b)(1). A taxpayer is transacting business within Indiana if the taxpayer *regularly* engages in transactions with Indiana customers that involve intangible property, including loans. 45 IAC 17-2-6(a)(8). (Emphasis added)

Taxpayer, with its corporate domicile in a taxing jurisdiction outside Indiana, conducts the business of a financial institution.

45 IAC 17-2-9 lays the groundwork for determining whether a taxpayer regularly conducts business within Indiana. It reads:

> A taxpayer is presumed, subject to rebuttal, to regularly solicit business within Indiana during a taxable year if at any time during the taxable year, the sum of the taxpayer's assets, including the assets arising from loan transactions, and the absolute value of the taxpayer's deposits attributable to Indiana, equal at least five million dollars ($ 5,000,000), or if the taxpayer does any of the following during the taxable year:
>
> (1) Sells products or services of any kind or nature to twenty (20) or more Indiana customers who receive the product or service in Indiana.
>
> (2) Solicits business from twenty (20) or more potential Indiana customers.
>
> (3) Performs services outside Indiana that are consumed within Indiana by twenty (20) or more customers.
>
> (4) Engages in transactions with twenty (20) or more Indiana customers that involve intangible property, including loans, but not property described in section 7 of this rule and result in receipts flowing to the corporation from such customers within Indiana.

While the regulation creates a rebuttable presumption of regular business activity when a taxpayer meets the above criteria, it also *ipso facto* creates a rebuttable presumption that a taxpayer does not regularly conduct business activity in Indiana when it fails to meet the above criteria. Therefore, the fact that taxpayer does not meet the above criteria (its loan servicing rights were sold for less than $50,000, and it services only one Indiana customer) does not automatically mean that taxpayer does not regularly conduct business in Indiana; rather, it creates a presumption that the Department may rebut.

However, the Department has failed to show any indication that taxpayer's activities show a pattern of regular business. Indeed, the fact that taxpayer has but one Indiana customer shows not a pattern of regular business, but an isolated occurrence.

Taxpayer therefore does not fit the standard for which the FIT may be applied.

FINDINGS

The taxpayer is sustained.

AB/JM/MR 031206